



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the fee for filing an Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on August 12, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on July 25, 2022 was sent to the Tenant at the rental unit, via registered mail. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Agent for the Landlord stated that he is aware that the Tenant filed the aforementioned Application for Dispute Resolution and that a copy of it was served to a former agent for the Landlord.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Agent for the Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

As the Tenant failed to attend the hearing, I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution. I therefore dismiss the Tenant's Application for Dispute Resolution, without leave to reapply.

Preliminary Matter #2

The Agent for the Landlord was asked if he would like to amend the Landlord's Application for Dispute Resolution to include any rent that became due after July 31, 2022. He replied that he did not wish to amend the Application for Dispute Resolution as the Landlord does not, at this time, want a monetary Order for unpaid rent that has accrued since August 01, 2022.

Issue(s) to be Decided

Should the Landlord be granted an Order of Possession?
Is the Landlord entitled to compensation for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- The tenancy began on April 01, 2022;
- The Tenant agreed to pay rent of \$1,550.00 plus fees of \$25.93 by the first day of each month;
- The Tenant did not pay the rent or fees when they were due on July 01, 2022;
- On July 13, 2022 the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the door of the rental unit, which declared that the rental unit must be vacated by July 26, 2022;

- The Tenant did not pay any of the unpaid rent for July until September 09, 2022, at which time he paid \$500.00;
- The Tenant paid another \$500.00 towards rent for July on October 14, 2022;
- The Tenant paid another \$50.00 towards rent for July on November 18, 2022;
- The Landlord is seeking a monetary Order for unpaid rent from July of 2022, in the amount of \$500.00; and
- The Landlord is not seeking to recover the \$25.93 in fees that were due on July 01, 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agree to pay rent of \$1,550.00 and fees of \$25.93 by the first day of each month and that he did not pay those amounts when they were due on July 01, 2022.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As no evidence was presented to establish that the Tenant was not obligated to pay rent on July 01, 2022 and the evidence shows that he still owes \$500.00 of the rent that was due on July 01, 2022, I find that the Landlord is entitled to a monetary Order for \$500.00.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the Tenant has not paid all the rent that was due on July 01, 2022, I find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed testimony, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was properly served to the Tenant when it was posted on the door of the rental unit on July 13, 2022.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has not paid all of the rent that was due on July 01, 2022, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore grant the Landlord an Order of Possession.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the cost of filing an Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective on December 31, 2022. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$600.00, which includes \$500.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$600.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 08, 2022

Residential Tenancy Branch